

## Message Text

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17

ACTION JUSE-00

INFO OCT-01 EA-06 ISO-00 L-02 SCS-03 SCA-01 PM-03 CIAE-00

INR-05 NSAE-00 RSC-01 /022 W  
----- 035055

R 120515Z DEC 74

FM AMEMBASSY MANILA  
TO SECSTATE WASHDC 9061  
CSAF WASHDC (JACI)  
INFO CINCPAC  
CINCPACAF  
CINCPACREPPHIL  
12TH AF  
3RD CSG

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PLEASE PASS DEPARTMENT OF JUSTICE, FOREIGN LITIGATION UNIT

E O 11652: N/A

TAGS: MARR, RP

SUBJ: CIVIL LITIGATION - RIEL VS MICHELA, ET AL

REF: A) 3D CSG 060301Z DEC 74

B) CSAF (JACI) 09200Z DEC 74

1. IN ORDER FOR ADDRESSEES TO UNDERSTAND FULLY EMBASSY POSITION AS REFLECTED IN REFTEL (A) AND COMMENTED UPON IN REF (B), EMBASSY BELIEVES IT APPROPRIATE TO RESTATE ITS POSITION IN RELATION TO CIVIL CASES IN WHICH INDIVIDUALS ARE NAMED DEFENDANTS IN CIVIL INCIDENTS THAT ALLEGEDLY AROSE FROM ACTS PERFORMED IN THEIR OFFICIAL DUTY CAPACITY.

2. LEGAL ACTIONS OF THE NATURE IN QUESTION ARE NOT UNUSUAL. IN FACT, VERY SELDOM IS THE USG NAMED AS DEFENDANT. THE USUAL PRACTICE IS FOR THE SUIT TO BE DIRECTED AGAINST THE U.S. EMPLOYEES WHOSE ACTION GAVE RISE TO THE ALLEGED INJURY, EVEN THOUGH SAID EMPLOYEE WAS ACTING WITHIN THE SCOPE OF HIS  
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EMPLOYMENT OR DUTIES AT THE TIME. IN FACT, EMBASSY IS UNAWARE

OF ANY CIVIL ACTION COMMENCED IN THE PHILIPPINES IN THE LAST SEVERAL YEARS IN WHICH USG WAS NAMED AS DEFENDANT.

3. AS THE ACTION ON ITS FACE IS AGAINST INDIVIDUAL DEFENDANTS AND NOT RPT NOT AGAINST THE USG, ART. XIV US/RP MBA CREATES AN OBLIGATION FOR THE U.S. MILITARY AUTHORITIES TO MAKE APPROPRIATE ARRANGEMENT FOR SERVICE TO BE PERFECTED. ACCORDINGLY, EMBASSY BELIEVES THAT FOR BASE AUTHORITIES TO REFUSE SERVICE, AS WAS DONE IN SUBJECT CASE, IS NOT IN ACCORDANCE WITH THE USG OBLIGATION STATED IN ART. XIV.

4. THE ISSUE OF WHETHER THE NAMED DEFENDANTS ACTED WITHIN THEIR OFFICIAL FUNCTION IS A JUDICIAL MATTER WHICH SHOULD BE RESOLVED BY THE COURT AFTER APPROPRIATE MOTIONS ARE FILED BY DEFENDANTS AND IF SUCH IS NOT SUCCESSFUL, THEN PROVEN IN THE TRIAL ON THE MERITS OF THE CASE.

5. TO TAKE UP SUCH CASES AT THE DIPLOMATIC LEVEL WOULD ELEVATE WHAT IS ESSENTIALLY A FACTUAL MATTER, TO BE DETERMINED IN A JUDICIAL FORUM, TO THE POLITICAL ARENA. IT IS FOR THE COURTS AND NOT THE EXECUTIVE BRANCH OF A GOVERNMENT TO DETERMINE BY APPROPRIATE JUDICIAL PROCESS WHETHER IT HAS THE PROPER PARTY DEFENDANT BEFORE IT; AND THAT DETERMINATION, IPSO FACTO, REQUIRES THE COURT TO DETERMINE IF THE ACTS COMPLAINED OF WERE IN THE NATURE OF AND WITHIN THE SCOPE OF AN OFFICIAL SOVEREIGN FUNCTION. AS POINTED OUT IN REF B THE QUESTION OF SOVEREIGN IMMUNITY IS NOT ON ISSUE AS THE DEFENDANTS DO NOT QUALIFY AS A SOVEREIGN.

6. WHEN THE EMBASSY RECEIVED THE SUMMONS AND COMPLAINTS IN SUBJECT CASE BY DIPLOMATIC NOTE IT HAD TWO OPTIONS. THE FIRST WAS TO RETURN THE PAPERS BY DIPLOMATIC NOTE TO THE DFA FOR RESERVICE IN ACCORDANCE WITH ART. XIV, MBA. THIS OPTION WOULD ACCOMPLISH NOTHING EXCEPT TO ANTAGONIZE EVERYONE CONCERNED. THE OTHER OPTION WAS TO FORWARD THE PROCESS TO THE MILITARY AUTHORITIES FOR "APPROPRIATE ACTION." THE LATTER COURSE APPEARED TO BE REQUIRED AND WAS FOLLOWED IN SUBJECT CASE.

7. EMBASSY IS NOW IN RECEIPT OF SIMILAR TYPE OF PROCESS IN THE GARRITY CASE FORWARDED BY THE DFA AND HAS FORWARDED IT TO CLARK FOR APPROPRIATE ACTION. AS EMBASSY IS OF THE FIRM OPINION THAT LIMITED OFFICIAL USE

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SUCH SERVICE SHOULD NOT HAVE BEEN REFUSED BY THE BASE AUTHORITY UNDER ART. XIV, EMBASSY RECOMMENDS IN FUTURE CASES OF SIMILAR NATURE THAT SERVICE BE ACCEPTED AND THE UNNECESSARY PROCEDURE OF REQUESTING COURT TO FORWARD PROCESS THROUGH THE DFA BE DISCONTINUED.

8. REQUEST COMMENTS.  
ARNOLD

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## Message Attributes

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**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** LITIGATION, FOREIGN POLICY POSITION  
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**Disposition Approved on Date:**  
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**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
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